IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

# MICHAEL LEWIS v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County**
**No. 90-S-972 Steve R. Dozier, Senior Judge**

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**No. M2006-01671-CCA-R3-HC - Filed December 21, 2006**

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This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the trial court's order summarily dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Michael Lewis, Pro Se, Nashville, Tennessee.

Paul G. Summers, Attorney General & Reporter; Brent C. Cherry, Assistant Attorney General, for the appellee, State of Tennessee.

## MEMORANDUM OPINION

The petitioner pled guilty to one count of armed robbery and one count of aggravated assault on September 20, 1990. As a result of these pleas, the trial court sentenced him to an effective sentence of ten years. On July 14, 1993, the petitioner pled nolo contendere to one count of aggravated robbery. The trial court sentenced the petitioner to twelve years as a result of this plea, and ordered that the twelve year sentence be served consecutively to his previous ten year sentence.

The petitioner appealed the twelve-year sentence from his 1993 aggravated robbery plea. State v. Michael Anthony Lewis, No. 01C01-9403-CC-00085, 1995 WL 340735 (Tenn. Crim. App.,

at Nashville, June 8, 1995). The facts of this opinion include information that the petitioner was on parole from a ten-year sentence for aggravated robbery at the time he committed the 1993 aggravated robbery. Michael Anthony Lewis, 1995 WL 340735 at *1. This Court upheld the petitioner's twelve-year sentence. Id. at *3.

On June 14, 2001, the petitioner was involved in a police pursuit during which he shot a police officer five times. State v. Michael Anthony Lewis, No. 2005-02279-CCA-R3-CD, 2006 WL 2738160 at *1 (Tenn. Crim. App., at Nashville, Sept. 26, 2006). Following a jury trial, he was convicted of attempted first degree murder and sentenced to sixty years as a career offender. Id.

On April 20, 2006, the petitioner filed a Petition for Writ of Habeas Corpus. In this petition, the petitioner argued that his 1990 and 1993 convictions are void because the plea agreements upon which they had been based violated his constitutional rights. Specifically, he argued that he was not advised that he would not be able to vote, engage in certain businesses, cannot serve as an official of a labor union for any period of time nor can he be a juror. On May 22, 2006, the Habeas Corpus Court summarily denied the petition. The court based this denial on the fact that the petitioner was no longer in custody for either the 1990 or 1993 convictions. The court states in its order that this fact had been "verified [ ] through the Department of Corrections time computation department."

The petitioner now appeals from the habeas corpus court's denial of his petition. The petitioner argues that even though his sentences from his 1990 and 1993 convictions have been fully served there are still collateral consequences from these convictions and he is presently in custody.

## Analysis

The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the trial court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App. at Jackson, Mar. 11, 1998).

Our supreme court had determined that, "a person is not 'restrained of liberty' for purposes of the habeas corpus statute unless the challenged judgment itself imposes a restraint upon the petitioner's freedom of action or movement." Hickman v. State, 153 S.W.3d 16, 23 (Tenn. 2004). The petitioner had conceded in his brief that the sentences for both the 1990 and 1993 convictions have been fully served. Therefore, the petitioner is not "in custody" for purposes of the habeas corpus statute and cannot avail himself of this remedy. Moreover, even if the allegations in the petition are true, they relate to the voluntariness of the petitioner's guilty pleas and therefore are properly the subject only of a post-conviction petition on the grounds that the pleas are "voidable." However, we must point out that we are unable to consider the petition as a petition for post-conviction relief because it would be barred by the statute of limitations. Tenn. Code Ann. § 40-30-102.

The petitioner has failed to show that his judgments are void. He has not shown that the convicting courts were without jurisdiction, and he has not shown that he is being held despite the expiration of his sentence. There is nothing in the record or on the face of the judgments to show that the petitioner's writ of habeas corpus should be granted. When there is no cognizable claim, a habeas corpus court may summarily dismiss a writ without the appointment of counsel or holding a hearing. Passarella, 891 S.W.2d at 619.

Therefore, the habeas corpus court was correct in summarily dismissing the petitioner's writ of habeas corpus.

## Conclusion

Rule 20 of the Rules of the Court of Criminal Appeals provides:

> The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:
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> (1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge, . . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the trial court.

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JERRY L. SMITH, JUDGE